

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 16 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PAUL LYCHE, Estate of; MARY)
LYCHE, Personal Representative,)

Plaintiffs-Appellants,)

v.)

WASHINGTON COUNTY;)
RICHARD GARRICK; PETER)
OLSON; STEPHEN WILHELM;)
HENNINGSON DURHAM &)
RICHARDSON, INC., dba HDR)
Architecture, Inc., a Nebraska)
Corporation, qualified to do business)
in Oregon; ROBERT J. FRASCA;)
GREGORY S. BALDWIN; DANIEL)
J. HUBERTY; ROBERT G.)
PACKARD, III; LARRY S.)
BRUTON; R. DOSS MABE;)
EVERETT J. RUFFCOM; H.)
RANDY LEACH; KENNETH D.)
SANDERS; KARL R.)
SONNENBERG, dba Zimmer Gunsul)
Frasca Partnership Architecture/)
Planning/Interior Design, an Oregon)
partnership; PRISON HEALTH)
SERVICES INC., a Tennessee)
corporation qualified to do business in)

No. 04-35966

D.C. No. CV-01-00418-JE (REJ)

MEMORANDUM*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Oregon,)
)
Defendants-Appellees.)
_____)

Appeal from the United States District Court
for the District of Oregon
Robert E. Jones, District Judge, Presiding

Argued and Submitted March 6, 2006
Portland, Oregon

Before: FERNANDEZ, TASHIMA, and PAEZ, Circuit Judges.

The Estate of Paul Lyche appeals the district court's grant of summary judgment to Zimmer Gunsul Frasca Partnership and its partners and to HDR Architecture, Inc. (collectively the Architects). The district court held that as a matter of law the Architects, who designed a jail facility for Washington County, Oregon, were not liable in negligence to the Estate for the suicide of Paul Lyche in one of the cells. We affirm.

The Estate claims that under Oregon law, the Architects may be liable in negligence. However, we agree with the district court that on this record the Oregon courts, as a matter of law, would not fasten negligence liability upon the Architects. Under Oregon law, liability of the Architects could not be established by the mere fact that Lyche found a way to commit suicide by discovering a place from which to hang himself in a standard jail cell about a year after the jail facility

was turned over to the County. See Or. Steel Mills, Inc. v. Coopers & Lybrand, LLP, 83 P.3d 322, 327–28, 330 (Or. 2004); Buchler v. State ex rel. Or. Corr. Div., 853 P.2d 798, 803–05 (Or. 1993); Fazzolari ex rel. Fazzolari v. Portland Sch. Dist. No. 1J, 734 P.2d 1326, 1336 (Or. 1987); see also Bruzga v. PMR Architects, P.C., 693 A.2d 401, 402–04 (N.H. 1997) (architect of jail facility not liable for a suicide); Tittle v. Giattina, Fisher & Co., Architects, Inc., 597 So.2d 679, 681 (Ala. 1992) (same); La Bombarbe v. Phillips Swager Assocs. Inc., 474 N.E.2d 942, 944–45 (Ill. App. Ct. 1985) (same); cf. Harbaugh v. Coffinbarger, 543 S.E.2d 338, 346 (W. Va. 2000) (per curiam) (in general, suicide is an intervening cause that precludes liability); Krieg v. Massey, 781 P.2d 277, 279 (Mont. 1989) (same); McLaughlin v. Sullivan, 461 A.2d 123, 124 (N.H. 1983) (same). Indeed, any other approach would risk exposing jail architects to “endless suicide liability”¹ despite a county’s own decisions about design and about placement of prisoners in particular cells within a facility.

AFFIRMED.

¹ Bruzga, 693 A.2d at 403.

